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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,972	02/11/2004	Bruce M. Russell	IR 7190-00	3195
23909 7590 10/31/2007 COLGATE-PALMOLIVE COMPANY 909 RIVER ROAD PISCATAWAY, NJ 08855			EXAMINER GRAHAM, GARY K	
			ART UNIT 3723	PAPER NUMBER
			MAIL DATE 10/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/776,972

Applicant(s)

RUSSELL ET AL.

Examiner

Gary K. Graham

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,9-12 and 15-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,7,8,13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 20041021,20050310,20050715.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Election/Restrictions***

Applicant's election without traverse of Group I, claims 1-14, in the reply filed on 23 August 2007 is acknowledged. Claims 15-22 are withdrawn as being directed to a non-elected invention. Further, applicant's election without traverse of the figure 1 species is also acknowledged. However, while it appears applicant sets forth that claims 1-14 read on the elected embodiment, such does not appear accurate. Claims 5 and 6 are directed specifically to the figure 2A embodiment with a LED(s) surface mounted to the toothbrush. The specification discusses the surface mounting of the LED(s) in the carrier field. This is distinct from the light source being provided within the handle, as set forth in claim 2. Claims 9-12 are directed specifically to the figure 3 embodiment with a powered toothbrush having a movable cleaning element. This is distinct from the elected manual toothbrush of figure 1 as set forth in claim 7. Thus, claims 5, 6 and 9-12 are withdrawn from further consideration.

Applicant's request in the remarks of the 23 August 2007 election that "Figures 2 and 4, which are not subject to the Election of Species Requirement, be considered as part of the election" is noted but not persuasive. Figures 2 and 4 are elevational views of the Figures 1 and 3 toothbrushes, respectively. They are not directed to distinct species. The groupings set forth in the election of species requirement are merely representative of the various species. In other words, figures 1 and 2 show the same elected toothbrush. Figures 3 and 4 show the same non-elected toothbrush.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7, 8, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Brenman (US patent 3,261,978).

The patent to Brenman discloses the invention a toothbrush, as is claimed. Brenman discloses a manual toothbrush (figs.4-6) comprising a handle (32), a cleaning head (36) attached to the handle and cleaning bristle elements (40) extending from a surface of the head within a cleaning field. The toothbrush includes an ultraviolet light source in the form of a bulb (34) in the handle. The UV light is transmitted to the head (36) via light transmission structure (38) and then from emitters (46) on the head, within the field. The light is activated by a switch (14) on the handle.

With respect to claim 1, and the phrases “for creating a whitening effect” and “for activating an optical brightener”, such relate to the intended use of the device and do not act to distinguish the toothbrush from Brenman. The brush of Brenman could be used in such a manner as nothing would prohibit such.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brenman (US patent 3,261,978) in view of Lin (US Patent Application Publication 2004/0053190).

The patent to Brenman discloses all of the above recited subject matter with the exception of the light source being UV emitting LED's.

The publication to Lin discloses using LED's (31) as a UV light source on a toothbrush. It should be noted that LED's are well known UV light sources.

Art Unit: 3723

While Brenman discloses use of a light bulb to provide the UV light, to employ a different well known source such as LED's appears but a mere substitution of one well known UV source for another. LED's are well known for their increased efficiency by a reduction in power consumption over bulbs. Further, Lin clearly teaches use of LED's to provide UV light on toothbrushes. It would have been obvious to one of skill in the art use an LED as the UV light source for the toothbrush of Brenman, as is well known and as is clearly suggested by Lin, to increase the efficiency of the toothbrush.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Gary K. Graham", with a long horizontal line extending from the left side of the signature.

Gary K Graham  
Primary Examiner  
Art Unit 3723

GKG  
25 October 2007